

House Study Bill 662

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT
OF AGRICULTURE AND
LAND STEWARDSHIP BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to devices used for weighing and measuring, by
2 providing for the regulation of the devices, motor vehicle
3 fuel, and persons who service the devices, and providing for
4 fees and penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6 TLSB 5436DP 81

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1 1 Section 1. Section 214.1, Code 2005, is amended to read as
1 2 follows:

1 3 214.1 DEFINITIONS.

1 4 For the purpose of this chapter:

1 5 1. "Commercial scale" means the same as defined in section
1 6 215.26.

1 7 2. "Commercial weighing and measuring device" or "device"
1 8 means the same as defined in section 215.26.

~~1 9 3. "Motor vehicle fuel" means a substance or
1 10 combination of substances which is intended to be or is
1 11 capable of being used for the purpose of propelling or running
1 12 by combustion any internal combustion engine and is kept for
1 13 sale or sold for that purpose the same as defined in section
1 14 214A.1.~~

1 15 2. 4. "Motor vehicle fuel pump" pump meter" means a
1 16 stationary pump, meter, or similar weighing and measuring
1 17 device which is used for measuring retail to measure motor
1 18 vehicle fuel.

~~1 19 3. "Public scale" shall mean any scale or weighing device
1 20 for the use of which a charge is made or compensation is
1 21 derived.~~

1 22 5. "Retail dealer" means the same as defined in section
1 23 214A.1.

1 24 6. "Wholesale dealer" means the same as defined in section
1 25 214A.1.

1 26 Sec. 2. Section 214.2, Code 2005, is amended to read as
1 27 follows:

1 28 214.2 LICENSE.

1 29 A person who uses or displays for use ~~any a~~ commercial
1 30 weighing and measuring device, ~~as defined in section 215.26,~~
1 31 shall ~~secure obtain~~ a license from the department.

1 32 Sec. 3. Section 214.3, subsection 1, Code 2005, is amended
1 33 to read as follows:

1 34 1. ~~The A~~ license for the inspection of a commercial
1 35 weighing and measuring device other than for a motor vehicle

~~2 1 fuel pump meter shall expire on December 31 of each year, and,
2 2 A license for the inspection of a motor vehicle fuel pump~~

~~2 3 meter shall expire on June 30 of each year. The amount of the
2 4 fee due for each license shall be as provided in subsection 3,~~

~~2 5 except that the fee for a motor vehicle fuel pump shall be
2 6 four dollars and fifty cents if paid within one month from the
2 7 date the license is due. A person shall apply to the~~

~~2 8 department to be issued a license or to renew a license as
2 9 provided by the department. The person shall pay the
2 10 department a license fee as provided in section 214.3A.~~

2 11 Sec. 4. Section 214.3, subsection 3, Code 2005, is amended
2 12 by striking the subsection.

2 13 Sec. 5. NEW SECTION. 214.3A LICENSE FEE SCHEDULE.

2 14 The department shall charge a fee for a license that it
2 15 issues or renews pursuant to section 214.3. The fee shall be
2 16 submitted with the license application. The amount of the fee

2 17 is as follows:

2 18 1. For commercial scales, the fee shall be based on its
2 19 capacity as follows:

2 20 a. Five hundred pounds or less, nine dollars.

2 21 b. More than five hundred pounds but not more than five
2 22 thousand pounds, sixteen dollars and fifty cents.

2 23 c. More than five thousand pounds but not more than fifty
2 24 thousand pounds, forty-six dollars and fifty cents.

2 25 d. More than fifty thousand pounds but not more than one
2 26 hundred twenty thousand pounds, eighty-four dollars.

2 27 e. More than one hundred twenty thousand pounds, one
2 28 hundred six dollars and fifty cents.

2 29 2. For meters, the fee shall be based on the type of meter
2 30 as follows:

2 31 a. A motor vehicle fuel pump meter which is used by a
2 32 retail dealer, four dollars and fifty cents if the fee is paid
2 33 before August 1 after the date that license expires as
2 34 provided in section 214.3. The fee shall be nine dollars if
2 35 the fee is paid on or after August 1.

3 1 b. A mass bulk meter, nine dollars.

3 2 c. A refined or bulk meter, nine dollars.

3 3 d. A stationary bulk fuel meter, nine dollars.

3 4 e. A stationary liquid petroleum gas meter, nine dollars.

3 5 f. A moisture meter, twenty-four dollars.

3 6 g. A liquid petroleum bulk truck meter, fifty-two dollars
3 7 and fifty cents.

3 8 Sec. 6. Section 214.4, subsection 1, unnumbered paragraph
3 9 1, Code 2005, is amended to read as follows:

3 10 If the department does not receive payment of the license
3 11 fee required pursuant to section ~~214.3~~ 214.3A within one month
3 12 from the due date, the department shall send a notice to the
3 13 owner or operator of the device. The notice shall be
3 14 delivered by certified mail. The notice shall state all of
3 15 the following:

3 16 Sec. 7. Section 214.4, subsection 1, paragraph b, Code
3 17 2005, is amended to read as follows:

3 18 b. The owner or operator has fifteen days after receipt of
3 19 the notice to pay the license fee ~~required pursuant to section~~
3 20 ~~214.3~~.

3 21 Sec. 8. Section 214.5, Code 2005, is amended to read as
3 22 follows:

3 23 214.5 INSPECTION STICKERS.

3 24 ~~1. For each if the department licenses a commercial~~
3 25 ~~weighing and measuring device licensed pursuant to section~~
3 26 ~~214.2, the department shall also issue an inspection sticker,~~
3 27 ~~which upon its inspection and approval of the device.~~

3 28 ~~2. The inspection sticker shall not exceed two inches by~~
3 29 ~~two inches in size. The inspection sticker shall be displayed~~
3 30 ~~prominently on the front of the commercial weighing and~~
3 31 ~~measuring device, and the defacing or wrongful removal of the~~

3 32 ~~3. A person shall not deface or wrongfully remove an~~
3 33 ~~inspection sticker shall be punished as provided in chapter~~
3 34 ~~189.~~

3 35 ~~4. Absence The absence of an inspection sticker on a~~
4 1 ~~commercial weighing and measuring device is prima facie~~
4 2 ~~evidence that the commercial weighing and measuring device is~~
4 3 ~~being operated contrary to law.~~

4 4 Sec. 9. Section 214.6, Code 2005, is amended to read as
4 5 follows:

4 6 214.6 OATH OF WEIGHMASTERS.

4 7 ~~All persons keeping public scales~~ A person who keeps a
4 8 ~~commercial scale, before entering upon their engaging in the~~
4 9 ~~person's duties as weighmasters a weighmaster, shall be sworn~~
4 10 ~~before some a person having authority to administer oaths, to.~~
4 11 ~~The person who takes the oath shall swear to keep their the~~
4 12 ~~person's scales correctly balanced, to make true weights, and~~
4 13 ~~to render a correct account to the person having who requests~~
4 14 ~~that a weighing done be performed.~~

4 15 Sec. 10. Section 214.8, Code 2005, is amended to read as
4 16 follows:

4 17 214.8 ~~PENALTY~~ PENALTIES == LIABILITY FOR DAMAGES.

4 18 ~~1. Any weighmaster violating any of the provisions of~~
4 19 ~~sections 214.6 and 214.7, shall be Except as provided in~~
4 20 ~~subsection 2, a person who violates a provision of this~~
4 21 ~~chapter is guilty of a simple misdemeanor, and be. Each day~~
4 22 ~~that a continuing violation occurs shall be considered a~~
4 23 ~~separate offense.~~

4 24 ~~2. The state may proceed against a person who violates~~
4 25 ~~this chapter by initiating an alternative civil enforcement~~
4 26 ~~action in lieu of a prosecution. The alternative civil~~
4 27 ~~enforcement action may be brought against the person as a~~

4 28 contested case proceeding by the department under chapter 17A
4 29 or as a civil judicial proceeding by the attorney general upon
4 30 referral by the department. The department may impose,
4 31 assess, and collect the civil penalty. The civil penalty
4 32 shall be for at least one hundred dollars but not more than
4 33 one thousand dollars for each violation. Each day that a
4 34 continuing violation occurs shall be considered a separate
4 35 offense.

5 1 a. Except as provided in paragraph "b", the state is
5 2 precluded from prosecuting a violation pursuant to subsection
5 3 1, if the state is a party in the alternative civil
5 4 enforcement action, the department has made a final decision
5 5 in the contested case proceeding, or a court has entered a
5 6 final judgment.

5 7 b. If a party to an alternative civil enforcement action
5 8 fails to pay the civil penalty to the department within thirty
5 9 days after the party has exhausted the party's administrative
5 10 remedies and the party has not sought judicial review in
5 11 accordance with section 17A.19, the department may order that
5 12 its final decision be vacated. When the department's final
5 13 decision is vacated, the state may initiate a criminal
5 14 prosecution, but shall be precluded from bringing an
5 15 alternative civil enforcement action. If a party to an
5 16 alternative civil enforcement action fails to pay the civil
5 17 penalty within thirty days after a court has entered a final
5 18 judgment, the department may request that the attorney general
5 19 petition the court to vacate its final judgment. When the
5 20 court's judgment has been vacated, the state may initiate a
5 21 criminal prosecution, but shall be precluded from bringing an
5 22 alternative civil enforcement action.

5 23 3. A person who violates a provision of this chapter is
5 24 liable to the a person who is injured as a result of the
5 25 violation for all damages sustained.

5 26 Sec. 11. Section 214.9, Code 2005, is amended to read as
5 27 follows:

5 28 214.9 SELF=SERVICE MOTOR VEHICLE FUEL PUMPS PUMP METERS.
5 29 Self-service A self-service motor vehicle fuel pumps pump
5 30 meter located at a motor vehicle fuel stations station may be
5 31 equipped with an automatic latch-open devices device on the
5 32 fuel dispensing hose nozzle only if the nozzle valve is the
5 33 automatic closing type.

5 34 Sec. 12. Section 214.10, Code 2005, is amended to read as
5 35 follows:

6 1 214.10 RULES.
6 2 The department of agriculture and land stewardship may
6 3 promulgate adopt rules pursuant to chapter 17A as necessary to
6 4 promptly and effectively enforce the provisions of this
6 5 chapter.

6 6 Sec. 13. Section 214.11, Code 2005, is amended to read as
6 7 follows:

6 8 214.11 INSPECTIONS == RECALIBRATIONS == PENALTY.
6 9 The department of agriculture and land stewardship shall
6 10 provide for an annual inspections inspection of all each motor
6 11 vehicle fuel pumps pump meter which is licensed under this
6 12 chapter. Inspections The inspection shall be for the purpose
6 13 of determining determine the accuracy of the pumps' measuring
6 14 mechanisms, and for such purpose the department's inspectors
6 15 meter and the correctness of associated equipment. In order
6 16 to carry out an inspection, the department may enter upon the
6 17 premises of any a wholesale dealer or retail dealer, as they
6 18 are defined in section 214A.1, of motor vehicle fuel or a
6 19 person selling or offering to sell fuel oil within this state.

6 20 Upon completion of an inspection, the inspector shall affix
6 21 the department's seal to the measuring mechanism of the motor
6 22 vehicle fuel pump meter. The seal shall be appropriately
6 23 marked, dated, and recorded by the inspector. If the owner of
6 24 an inspected and sealed motor vehicle fuel pump meter is
6 25 registered with the department as a servicer in accordance
6 26 with section 215.23, or employs a person so registered as a
6 27 servicer, the owner or other servicer may open the motor
6 28 vehicle fuel pump meter's dispenser, break the department's
6 29 seal, recalibrate the measuring mechanism if necessary, and
6 30 reseat the motor vehicle fuel pump as long as meter, if the
6 31 department is notified of the recalibration within forty=
6 32 eight hours, on a form provided by the department. A person
6 33 violating a provision of this section is, upon conviction,
6 34 guilty of a simple misdemeanor.

6 35 Sec. 14. Section 214A.1, Code 2005, is amended by adding
7 1 the following new subsection:
7 2 NEW SUBSECTION. 2A. "Motor vehicle fuel pump meter" means
7 3 the same as defined in section 214.1.

7 4 Sec. 15. Section 214A.5, Code 2005, is amended to read as
7 5 follows:

7 6 214A.5 SALES SLIP ON DEMAND.

7 7 ~~1. Each A wholesale dealer or retail dealer in this state~~
7 8 shall, when making a sale of motor vehicle fuel, give to ~~each~~
7 9 a purchaser upon demand a sales slip, ~~upon which must be~~
7 10 ~~printed the words "This motor vehicle fuel conforms to the~~
7 11 ~~standard of specifications required by the state of Iowa."~~

7 12 2. Each A wholesale dealer in this state shall, when
7 13 making a sale of oxygenate octane enhancer, give to ~~each a~~
7 14 purchaser upon demand a sales slip upon which must be printed
7 15 the words "This oxygenate octane enhancer conforms to the
7 16 standard specifications required by the state of Iowa."

7 17 Sec. 16. Section 214A.7, Code 2005, is amended to read as
7 18 follows:

7 19 214A.7 DEPARTMENT INSPECTION == SAMPLES TESTED.

7 20 The department, ~~its agents or employees,~~ shall, from time
7 21 to time, make or cause to be made tests of any motor vehicle
7 22 fuel or oxygenate octane enhancer which is being sold, or held
7 23 or offered for sale within this state, ~~and for such purposes~~
7 24 ~~the inspectors have the right to. An inspector may enter upon~~
7 25 ~~the premises of any wholesale dealer or retail dealer of motor~~
7 26 ~~vehicle fuel or oxygenate octane enhancer within this state,~~
7 27 ~~and to take from any container a sample of the motor vehicle~~
7 28 fuel or oxygenate octane enhancer, not to exceed ~~eight sixteen~~
7 29 fluid ounces. The sample shall be sealed and appropriately
7 30 marked or labeled by the inspector and delivered to the
7 31 department. The department shall make, or cause to be made,
7 32 complete analyses or tests of the motor vehicle fuel or
7 33 oxygenate octane enhancer by the methods specified in section
7 34 214A.2.

7 35 Sec. 17. Section 214A.11, Code 2005, is amended to read as
8 1 follows:

8 2 214A.11 VIOLATIONS PENALTIES.

8 3 ~~1. Any Except as provided in subsection 2, a person~~
8 4 ~~violating the provisions who violates a provision of this~~
8 5 chapter ~~shall be~~ is guilty of a simple misdemeanor. ~~Each day~~
8 6 ~~that a continuing violation occurs shall be considered a~~
8 7 ~~separate offense.~~

8 8 2. The state may proceed against a person who violates
8 9 this chapter by initiating an alternative civil enforcement
8 10 action in lieu of a prosecution. The alternative civil
8 11 enforcement action may be brought against the person as a
8 12 contested case proceeding by the department under chapter 17A
8 13 or as a civil judicial proceeding by the attorney general upon
8 14 referral by the department. The department may impose,
8 15 assess, and collect the civil penalty. The civil penalty
8 16 shall be for at least one hundred dollars but not more than
8 17 one thousand dollars for each violation. Each day that a
8 18 continuing violation occurs shall be considered a separate
8 19 offense.

8 20 a. Except as provided in paragraph "b", the state is
8 21 precluded from prosecuting a violation pursuant to subsection
8 22 1, if the state is a party in the alternative civil
8 23 enforcement action, the department has made a final decision
8 24 in the contested case proceeding, or a court has entered a
8 25 final judgment.

8 26 b. If a party to an alternative civil enforcement action
8 27 fails to pay the civil penalty to the department within thirty
8 28 days after the party has exhausted the party's administrative
8 29 remedies and the party has not sought judicial review in
8 30 accordance with section 17A.19, the department may order that
8 31 its final decision be vacated. When the department's final
8 32 decision is vacated, the state may initiate a criminal
8 33 prosecution, but shall be precluded from bringing an
8 34 alternative civil enforcement action. If a party to an
8 35 alternative civil enforcement action fails to pay the civil
9 1 penalty within thirty days after a court has entered a final
9 2 judgment, the department may request that the attorney general
9 3 petition the court to vacate its final judgment. When the
9 4 court's judgment has been vacated, the state may initiate a
9 5 criminal prosecution, but shall be precluded from bringing an
9 6 alternative civil enforcement action.

9 7 Sec. 18. Section 214A.16, Code 2005, is amended to read as
9 8 follows:

9 9 214A.16 NOTICE OF BLENDED FUEL == DECAL.

9 10 If motor vehicle fuel containing a renewable fuel is sold
9 11 from a motor vehicle fuel pump meter, the ~~pump~~ motor vehicle
9 12 fuel pump meter shall have affixed a decal identifying the
9 13 name of the renewable fuel. The decal may be different based
9 14 on the type of renewable fuel used. The design and location

9 15 of the decal shall be prescribed by rules adopted by the
9 16 department. A decal identifying a renewable fuel shall be
9 17 consistent with standards adopted pursuant to section 159A.6.
9 18 The department may approve an application to place a decal in
9 19 a special location on a motor vehicle fuel pump meter or
9 20 container or use a decal with special lettering or colors, if
9 21 the decal appears clear and conspicuous to the consumer. The
9 22 application shall be made in writing pursuant to procedures
9 23 adopted by the department.

9 24 Sec. 19. Section 215.1, Code 2005, is amended to read as
9 25 follows:

9 26 215.1 DUTY TO INSPECT.

9 27 The department shall regularly inspect all commercial
9 28 weighing and measuring devices, and when complaint is made to
9 29 the department that any false or incorrect ~~weights weight~~ or
9 30 ~~measures are measure is~~ being made, the department shall
9 31 inspect the commercial weighing and measuring devices which
9 32 caused the complaint. The department may also inspect the
9 33 reliability of a commercial scanner to determine its accuracy.
9 34 The department may conduct a random inspection of prepacked
9 35 goods to determine whether the goods' weight is recorded
10 1 accurately.

10 2 Sec. 20. Section 215.2, Code 2005, is amended to read as
10 3 follows:

10 4 215.2 SPECIAL ~~INSPECTION~~ REQUEST == FEES.

10 5 The fee for a special ~~tests test~~, including but not limited
10 6 to, using state inspection equipment, for the calibration,
10 7 testing, certification, or repair of a commercial weighing and
10 8 measuring device shall be paid by the servicer or person
10 9 requesting the special test ~~in accordance with the following~~
10 10 ~~schedule.~~ The amount of the inspection fee shall be as
10 11 follows:

10 12 1. ~~Class S, scales~~ For a commercial scale, seventy-five
10 13 dollars per hour.

10 14 2. ~~Class M, meters~~ For a meter, fifty-two dollars and
10 15 fifty cents per hour.

10 16 Sec. 21. Section 215.4, Code 2005, is amended to read as
10 17 follows:

10 18 215.4 TAG FOR INACCURATE DEVICE == REINSPECTION == FEE.

10 19 A commercial weighing and measuring device found to be
10 20 inaccurate upon inspection by the department shall be ~~tagged~~
10 21 ~~"condemned rejected until repaired"~~ repaired and the "licensed
10 22 for commercial use" inspection sticker shall be removed. If
10 23 notice is received by the department that the device has been
10 24 repaired and upon reinspection the device is found to be
10 25 accurate, the license fee shall not be charged for the
10 26 reinspection. However, a second license fee shall be charged
10 27 if upon reinspection the device is found to be inaccurate. If
10 28 at a third reinspection the device is found to be inaccurate,
10 29 the license fee shall be charged and the device shall be
10 30 tagged "condemned" and removed from service.

10 31 Sec. 22. Section 215.9, Code 2005, is amended to read as
10 32 follows:

10 33 215.9 POWER OF CITIES LIMITED.

10 34 ~~Commodities~~ A city ordinance shall not require that a
10 35 commodity be weighed upon any scale bearing the inspection
11 1 card, issued by or measured if the commodity is weighed or
11 2 measured by a commercial weighing and measuring device
11 3 licensed by the department, shall not be required to be
11 4 reweighed by any ordinance of any city, nor shall their. A
11 5 city ordinance shall not restrict the sale, of a commodity at
11 6 the weights so a weight or measure ascertained, and because
11 7 thereof, be, by such ordinance, prohibited or restricted by a
11 8 commercial weighing and measuring device licensed by the
11 9 department.

11 10 Sec. 23. Section 215.10, Code 2005, is amended to read as
11 11 follows:

11 12 215.10 INSTALLATION OF NEW SCALES.

11 13 1. ~~It shall be unlawful to~~ A person shall not install a
11 14 commercial scale, used for commercial purposes in this state,
11 15 unless the commercial scale is so installed that it is easily
11 16 accessible for inspection and testing by equipment of the
11 17 department, and with due regard to the scale's size and
11 18 capacity. The installation shall be made consistent with the
11 19 requirements of section 215.18 and rules adopted by the
11 20 department.

11 21 2. ~~Every~~ A commercial scale manufacturer or dealer shall,
11 22 upon selling a commercial scale of the above types in Iowa,
11 23 submit to the department upon forms provided by the
11 24 department, the make, capacity of the scale, the date of sale,
11 25 and the date and location of its installation.

11 26 Sec. 24. Section 215.15, Code 2005, is amended to read as
11 27 follows:
11 28 215.15 SCALE PIT.
11 29 ~~Scale~~ A scale pit shall have be installed to ensure that
11 30 there is proper room for an inspector or service person to
11 31 repair or inspect the scale. ~~Scale~~ The installation shall be
11 32 made consistent with the requirements of section 215.18 and
11 33 rules adopted by the department. The scale pit shall remain
11 34 dry at all times and adequate drainage shall be provided for
11 35 the purpose of inspecting and cleaning.

12 1 Sec. 25. Section 215.17, Code 2005, is amended to read as
12 2 follows:

12 3 215.17 TEST WEIGHTS TO BE USED.

12 4 1. A person engaged in scale repair work for hire shall
12 5 use only test weights sealed by the department in determining
12 6 the effectiveness of repair work and the test weights shall be
12 7 sealed as to their accuracy once each year. However, a person
12 8 shall not claim to be an official scale inspector and shall
12 9 not use the test weights except to determine the accuracy of
12 10 scale repair work done by the person and the person shall not
12 11 be entitled to a fee for their use.

12 12 2. ~~A fee shall be charged and collected~~ The department
12 13 shall impose and collect fees at the time of inspection for
12 14 the inspection of such weights as follows:

12 15 a. A laboratory fee of seventy-five dollars per hour.

12 16 b. A service fee which shall be as follows:

12 17 (1) All weights up to and including 25
12 18 pounds..... \$ 1.10 each
12 19 (2) Over twenty-five pounds capacity,
12 20 up to and including 50 pounds..... 2.25 each
12 21 (3) Over 50 pounds capacity, up to and
12 22 including 100 pounds..... 3.00 each
12 23 (4) Over 100 pounds capacity, up to
12 24 and including 500 pounds..... 4.50 each
12 25 (5) Over 500 pounds capacity, up to
12 26 and including 1,000 pounds..... 7.50 each
12 27 (6) The fee for all tank calibrations shall be as follows:
12 28 (a) 100 gallons up to and including
12 29 300 gallons \$ 4.50
12 30 (b) 301 gallons up to and including
12 31 500 gallons 7.50
12 32 (c) 501 gallons up to and including
12 33 1,000 gallons 11.25
12 34 (d) 1,001 gallons up to and including
12 35 2,000 gallons 15.00
13 1 (e) 2,001 gallons up to and including
13 2 3,000 gallons 18.00
13 3 (f) 3,001 gallons up to and including
13 4 4,000 gallons 21.00
13 5 (g) 4,001 gallons up to and including
13 6 5,000 gallons 24.00
13 7 (h) 5,001 gallons up to and including
13 8 6,000 gallons 27.00
13 9 (i) 6,001 gallons up to and including
13 10 7,000 gallons 30.00
13 11 (j) 7,001 gallons and up 37.50

13 12 3. Calibration shall not be required ~~of for~~ a tank which
13 13 is not used for the purpose of measuring, or which is equipped
13 14 with a meter, and vehicle tanks loaded from meters and
13 15 carrying a printed ticket showing gallonage shall not be
13 16 required to be calibrated.

13 17 4. The department shall deposit moneys collected in fees
13 18 which are imposed under this section into the metrology fund
13 19 created in section 215.17A.

13 20 Sec. 26. NEW SECTION. 215.17A METROLOGY FUND.

13 21 1. A metrology fund is created in the state treasury under
13 22 the control of the department. The fund is composed of moneys
13 23 collected in fees required to be paid to the department
13 24 pursuant to section 215.17. The fund may also include moneys
13 25 appropriated by the general assembly and moneys available to
13 26 and obtained or accepted by the department from the United
13 27 States or private sources for placement in the fund.

13 28 2. Moneys in the fund are subject to an annual audit by
13 29 the auditor of state. The metrology fund is subject to
13 30 warrants written by the director of the department of
13 31 administrative services, drawn upon the written requisition of
13 32 the department.

13 33 3. Moneys in the fund are appropriated exclusively to the
13 34 department for the exclusive purpose of maintaining,
13 35 replacing, and upgrading equipment used in the department's
14 1 metrology laboratory.

14 2 4. The department may adopt rules pursuant to chapter 17A
14 3 which are necessary to administer this section.

14 4 5. Section 8.33 shall not apply to moneys in the fund.
14 5 Notwithstanding section 12C.7, moneys earned as income or
14 6 interest from the fund shall remain in the fund until expended
14 7 as provided in this section.

14 8 Sec. 27. Section 215.26, Code 2005, is amended by adding
14 9 the following new subsections:

14 10 NEW SUBSECTION. 0A. "Commercial scale" means a weighing
14 11 and measuring device which is used to determine the mass of a
14 12 body by using the effect of gravity on that body, if the
14 13 device is in the possession of a person who uses the device as
14 14 part of a business.

14 15 NEW SUBSECTION. 0B. "Commercial scanner" means an
14 16 electronic system that uses a laser bar code reader to
14 17 retrieve product identity, price, or other information stored
14 18 in the memory of a computer as defined in section 22.3A.

14 19 Sec. 28. Section 215.26, subsection 1, Code 2005, is
14 20 amended to read as follows:

14 21 1. "Commercial weighing and measuring device" or "device"
14 22 means a weight or measure or weighing or measuring device used
14 23 to establish size, quantity, area or other quantitative
14 24 measurement of a commodity sold by weight or measurement, or
14 25 where the price to be paid for producing the commodity is
14 26 based upon the weight or measurement of the commodity. The
14 27 term includes an accessory attached to or used in connection
14 28 with a commercial weighing or measuring device when the
14 29 accessory is so designed or installed that its operation may
14 30 affect the accuracy of the device. Commercial weighing and
14 31 measuring device includes a public commercial scale as defined
~~14 32 under section 214.1.~~

14 33 Sec. 29. NEW SECTION. 215.27 PENALTIES.

14 34 1. Except as provided in subsection 2, a person who
14 35 violates a provision of this chapter commits a simple
15 1 misdemeanor. Each day that a continuing violation occurs
15 2 shall be considered a separate offense.

15 3 2. The state may proceed against a person who violates
15 4 this chapter by initiating an alternative civil enforcement
15 5 action in lieu of a prosecution. The alternative civil
15 6 enforcement action may be brought against the person as a
15 7 contested case proceeding by the department under chapter 17A
15 8 or as a civil judicial proceeding by the attorney general upon
15 9 referral by the department. The department may impose,
15 10 assess, and collect the civil penalty. The civil penalty
15 11 shall be for at least one hundred dollars but not more than
15 12 one thousand dollars for each violation. Each day that a
15 13 continuing violation occurs shall be considered a separate
15 14 offense.

15 15 a. Except as provided in paragraph "b", the state is
15 16 precluded from prosecuting a violation pursuant to subsection
15 17 1, if the state is a party in the alternative civil
15 18 enforcement action, the department has made a final decision
15 19 in the contested case proceeding, or a court has entered a
15 20 final judgment.

15 21 b. If a party to an alternative civil enforcement action
15 22 fails to pay the civil penalty to the department within thirty
15 23 days after the party has exhausted the party's administrative
15 24 remedies and the party has not sought judicial review in
15 25 accordance with section 17A.19, the department may order that
15 26 its final decision be vacated. When the department's final
15 27 decision is vacated, the state may initiate a criminal
15 28 prosecution, but shall be precluded from bringing an
15 29 alternative civil enforcement action. If a party to an
15 30 alternative civil enforcement action fails to pay the civil
15 31 penalty within thirty days after a court has entered a final
15 32 judgment, the department may request that the attorney general
15 33 petition the court to vacate its final judgment. When the
15 34 court's judgment has been vacated, the state may initiate a
15 35 criminal prosecution, but shall be precluded from bringing an
16 1 alternative civil enforcement action.

16 2 Sec. 30. Section 422.11C, subsection 1, paragraph c, Code
16 3 2005, is amended to read as follows:

16 4 c. "Metered pump" means a motor vehicle fuel pump meter
16 5 licensed by the department of agriculture and land stewardship
16 6 pursuant to chapter 214.

16 7 Sec. 31. CODE EDITOR DIRECTIVE. The Code editor shall
16 8 transfer section 215.26 to the beginning of chapter 215.

16 9 Sec. 32. Section 214A.12, Code 2005, is repealed.

16 10 EXPLANATION

16 11 This bill amends Code chapters 214, 214A, and 215, which
16 12 regulate commercial weighing and measuring devices such as

16 13 scales and meters, and also provide for the inspection of
16 14 weights and measures, by the department of agriculture and
16 15 land stewardship. In general, Code chapter 214 regulates
16 16 devices and Code chapter 215 regulates service agencies
16 17 engaged in the business of installing, servicing, or repairing
16 18 these devices. Code chapter 214A generally regulates the
16 19 storage and dispensing of motor vehicle fuel at the wholesale
16 20 and retail levels. The three Code chapters contain some
16 21 overlapping provisions.

16 22 The bill changes the names of terms used in the Code
16 23 chapters. It changes the term "motor vehicle fuel pump" to
16 24 "motor vehicle fuel pump meter" and "public scale" to
16 25 "commercial scale". The bill defines these terms and makes
16 26 the use of terms consistent throughout all three Code
16 27 chapters. It also rewrites language in the chapters for
16 28 consistency and readability.

16 29 Many of the provisions in Code chapters 214 and 215 relate
16 30 to licensure and inspection requirements. The bill rewrites a
16 31 provision in Code chapter 214 which increases the fees charged
16 32 for both issuing and renewing a license. Under Code section
16 33 214.3, the license fee is generally based on the capacity of
16 34 the device or the type of device in service. The bill
16 35 eliminates a number of names for specific scales (counter
17 1 scales, portable platform scales, livestock monorail scales,
17 2 single animal scales, grain test scales, and precious metal
17 3 and gems scales). It amends provisions in Code section 215.17
17 4 to establish an hourly laboratory fee. It also provides that
17 5 all inspection fees enumerated in that section must be
17 6 deposited into a trust fund under the control of the
17 7 department for its use in maintaining, replacing, and
17 8 upgrading equipment used in the metrology laboratory.

17 9 The bill includes special penalty provisions in each of the
17 10 Code chapters. These chapters are codified in Title V,
17 11 subtitle 4, of the Code. Code section 189.21 provides a
17 12 general penalty for a violation of a provision in the
17 13 subtitle. The penalty is a simple misdemeanor. Code sections
17 14 214.8 and 214A.11 have duplicative penalty provisions. A
17 15 simple misdemeanor is punishable by confinement for no more
17 16 than 30 days or a fine of at least \$50 but not more than \$500
17 17 or by both. The bill provides that the state may proceed
17 18 against a person who violates a provision in one of these
17 19 chapters by initiating an alternative civil enforcement action
17 20 in lieu of a criminal prosecution. The amount of the civil
17 21 penalty ranges from \$100 to \$1,000. An alternative civil
17 22 enforcement action may be brought as a contested case
17 23 proceeding within the department under the Iowa administrative
17 24 procedure Act (Code chapter 17A) or as a court case by the
17 25 attorney general. If the state brings an alternative civil
17 26 enforcement action, it is precluded from bringing a criminal
17 27 prosecution. There is one exception. If the party found in
17 28 violation of the law fails to pay the civil penalty to the
17 29 department within a 30-day period, the department may take
17 30 steps to vacate the administrative order or court judgment
17 31 which imposed the civil penalty and the state may initiate the
17 32 criminal prosecution, but is precluded from bringing a new
17 33 alternative civil enforcement action.

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